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BROWNING-FERRIS INDUSTRIES OF CALIFORNIA, INC.

STATE WATER RESOURCES CONTROL BOARD

**BROWNING-FERRIS INDUSTRIES OF
CALIFORNIA, INC.,**

Petitioner.,

**PETITION FOR REVIEW OF WASTE
DISCHARGE REQUIREMENTS**

Petitioner Browning-Ferris Industries of California, Inc. ("BFI") hereby petitions the State Water Resources Control Board for review under California Water Code Section 13320(a) of an action of the California Regional Water Quality Control Board, Los Angeles Region ("Regional Board"). The Regional Board issued Waste Discharge Requirements ("WDRs") for the Sunshine Canyon Landfill Expansion Project (the "Expansion Project") on December 4, 2003, that include provisions that are either beyond the authority of the Regional Board or inappropriate or improper and not supported by the record.

The Expansion Project has received all necessary land use and related approvals from the City of Los Angeles and the California Integrated Waste Management Board. Collectively, these entities have determined that the Sunshine Canyon Landfill and the associated Expansion Project meet State and Federal requirements and their permits have incorporated conditions to minimize impacts on the surrounding community. The Expansion Project at issue in this case is crucial for meeting the waste disposal needs of residents and businesses located in the Los Angeles area. Given that remaining capacity at the existing

1 Sunshine Canyon Landfill will be exhausted within approximately eight months, time is of
2 the essence in this case.

3 1. Petitioner. Petitioner is Browning-Ferris Industries of California, Inc.
4 Petitioner owns Sunshine Canyon Landfill, located at 14747 San Fernando Road, Sylmar,
5 California, 818.833.6500. The local contact is Dave Edwards who can be reached at
6 909.861.5452. His email address is deheac@gte.net.

7 2. Action to be Reviewed and Relief Requested. Petitioner seeks review
8 of the WDRs issued by the Regional Board for the Expansion Project. A copy of the WDRs
9 is Exhibit A.

10 3. Date of Action. The WDRs were adopted on December 4, 2003.

11 4. Reasons Why Regional Board's Action Was Inappropriate or Improper.

12 The issuance of the subject WDRs was inappropriate and improper for the
13 following reasons:

14 a. Petitioner submitted a Joint Technical Document ("JTD") proposing a
15 single-composite liner in full compliance with the requirements of 27 CCR. Regional Board
16 staff reviewed the JTD and issued tentative WDRs, which found that the proposed liner
17 complied with the requirements of State law and would protect groundwater. Following four
18 public hearings, the Regional Board amended the WDRs to require a double liner. This
19 decision was made without any technical review by staff or expert testimony that 1) the
20 proposed liner was inadequate; 2) that site characteristics required protection in addition to
21 the prescriptive liner required by State regulations; 3) that a double liner would provide any
22 quantifiable measure of additional protection; or 4) that the additional protection, if any,
23 would be justified in light of the additional costs involved;

24 b. The Regional Board added a reopener to allow the WDRs to be
25 revisited, and new conditions imposed, if necessary, after results are available from a general
26 public health survey that is currently underway. There is no evidence in the record that the
27 landfill is adversely impacting public health in the community nor is there any evidence of a
28 water-borne pathway by which the landfill could be impacting public health. In fact, the

1 expert testimony is that there is no water-borne pathway. As such, the Regional Board's
2 reliance on the results of such a study to impose additional restrictions on the Expansion
3 Project would be beyond the Regional Board's authority. The record with regard to public
4 health is as follows:

5 i. Based on expert review of available data bases, there is no credible
6 evidence of an increased risk of cancer or increased rates of mortality, low birth-weight
7 babies, birth defects, or infant mortality in the communities surrounding Sunshine Canyon
8 Landfill;

9 ii. There is no evidence in the record of a water-based pathway by which
10 the landfill could impact public health. Given that no water-based pathway exists for
11 potential exposure, the Regional Board, which is charged with protecting water quality, is
12 acting beyond the scope of its jurisdiction in considering the results of a general health study
13 in this case.

14 iii. Even if health issues associated with the landfill are identified, these
15 issues would relate to the inactive or operating portions of the existing landfill, not the
16 pending Expansion Project.

17 5. Manner in Which Petitioner Has Been Aggrieved. Petitioner has been
18 aggrieved by the Regional Board's decision to require a double liner, which will increase the
19 cost of the project by in excess of \$15 million over the cost of the prescriptive liner proposed
20 in the JTD. In addition, Petitioner is aggrieved by the Regional Board's continuing efforts to
21 assert its jurisdiction over alleged health impacts that are not water quality related. Lastly,
22 the Regional Board did not take action on the tentative WDRs in a timely manner. Pursuant
23 to Government Code sec. 65943 and 23 CCR sec. 3722, action should have been taken
24 within 180 days from the date the application was determined to be complete (February 5,
25 2003) or by no later than August 5, 2003.

26 6. State Board Action Requested. Petitioner respectfully requests that the
27 State Board determine that the Regional Board's actions in amending the tentative WDRs to
28 require a double liner and a reopener for the results of the health survey were inappropriate

1 and improper, and that it assume the powers of the Regional Board to amend the WDRs to
2 specify the single-composite liner originally proposed by Petitioner that complies with the
3 requirements of Title 27. In addition, Petitioner requests that the State Board delete the
4 reopener in Requirement M.2.

5 7. Statement of Points and Authorities. A Statement of Points and
6 Authorities is filed with this Petition.

7 8. Copy of Petition Sent to Regional Board. A copy of this Petition has
8 been sent to the Regional Board.

9 9. Statement Concerning Substantive Issues and Objections. Petitioner
10 repeatedly objected to the Board's delay in issuing the WDRs while it considered requiring a
11 public health study and considered other testimony, much of which was non-water quality
12 related. Petitioner opposed public requests for a double liner but did not address the issue in
13 detail because staff had proposed a modified liner design in response to the public's request
14 for a double liner. As set forth in the Statement of Points and Authorities, the substantive
15 issues and objections raised in this petition were not raised before the Regional Board
16 because Petitioner was precluded from doing so. The issue of a double liner and the
17 reopener for the public health study were raised by the Regional Board for the first time
18 during deliberations following the close of public testimony. Petitioner's attorney attempted
19 to address the Board but was not allowed to present testimony.

20 10. Preservation of Right to Request Hearing. As provided in 23 C.C.R.
21 Section 2050.6(b), Petitioner requests a hearing for the purpose of presenting additional
22 evidence not previously presented to the Regional Board. Petitioner requests the right to
23 supplement the Administrative Record by providing evidence as to the design and
24 construction challenges presented by the requirement for a double composite liner, the
25 additional cost of installing a double liner, the amount of air space that will be lost due to the
26 redesign of the landfill, and the delays caused by the Regional Board's failure to issue WDRs
27 in a timely manner as required by law. Petitioner was not allowed to testify as to any of
28 these matters at the December 4 hearing. December 4, 2003, Hearing Transcript, pp. 48-56.

1 Petitioner also requests that its letter dated November 18, 2003, which was rejected by the
2 Regional Board at the December hearing, be included in the administrative record.
3 December 4, 2003, Hearing Transcript, p. 56. Lastly, Petitioner requests a hearing on this
4 appeal so that all of the information described above can be presented to the State Board.

5 For the foregoing reasons, Petitioner requests that the State Board amend the
6 WDRs to delete the requirement for a double liner and the reopener for the public health
7 study.

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9 DATED: January 5, 2004

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